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265 NLRB No. 66

D--9504
Valley Park, MO

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DAVLAN ENGINEERING, INC.

and

Case 14--CA--16116

DISTRICT NO. 9, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL--CIO

DECISION AND ORDER

Upon a charge filed on August 5, 1982, by District No. 9, International Association of Machinists and Aerospace Workers, AFL--CIO, herein called the Union, and duly served on Davlan Engineering, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 14, issued a complaint on August 13, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on July 13, 1982, following a Board

election in Case 14--RC--9383,[1] the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate; and that, commencing on or about July 26, 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On August 23, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On September 24, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on September 29, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations

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[1] Official notice is taken of the record in the representation proceeding, Case 14--RC--9383, as the term ''record'' is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va. 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Board has delegated its authority in this proceeding to a three-member panel.[2]

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Respondent's opposition to the General Counsel's Motion for Summary Judgment admits the Union's request and Respondent's refusal to bargain but, in substance, attacks the validity of the Union's certification on the basis of its objections to the underlying representation proceeding.[3] The General Counsel argues that all material issues have been previously decided. We agree with the General Counsel.

Our review of the record herein, including the record in Case 14--RC--9383, reveals that on August 29, 1980, pursuant to a Stipulation for Certification Upon Consent Election, an election was held among the employees in the stipulated unit. The tally of ballots shows that of approximately 53 eligible voters, 34 cast valid ballots for, and 16 against, the Union; there were 2

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[2] We hereby deny Respondent's motion for reconsideration by the full Board of the underlying Decision and Certification of Representative and further deny Respondent's request that this case be decided by the full Board. See Enterprises Industrial Piping Company, 118 NLRB 1 (1957).

[3] The record reveals that by letter dated July 19, 1982, the Union requested Respondent to recognize it and bargain with it as the collective-bargaining representative of Respondent's employees and to furnish it with certain information relating to wages and terms and conditions of employment. By return letter of July 26, 1982, Respondent acknowledged receipt of the Union's bargaining demand and stated that its ''demand for recognition, information, and bargaining is rejected inasmuch as the purported certification in Case No. 14--RC--9383 is invalid.''

challenged ballots, an insufficient number to affect the results of the election.

Upon investigation of Respondent's objections, the Regional Director for Region 14 issued a Regional Director's Report on Objections and Recommendations and Order Directing Hearing and Notice of Hearing, recommending that two of Respondent's objections be overruled and that the remaining objections be resolved by a formal hearing. After conducting a hearing on Respondent's objections, the Hearing Officer, on August 24, 1981, issued his report recommending that the objections not previously ruled on by the Regional Director be overruled. Respondent filed exceptions to the Hearing Officer's Report and Recommendations. On October 27, 1981, the Regional Director filed a Supplemental Report on Objections and Recommendations recommending that the Hearing Officer's Report and Recommendations be adopted and that a certification of representative issue. Respondent filed exceptions to the Regional Director's supplemental report. On July 13, 1982, the Board adopted the Regional Director's recommendations and certified the Union as the exclusive bargaining representative of the employees in the stipulated unit.[4]

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section

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[4] 262 NLRB No. 104 (1982).

8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[5]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. Further, there are no factual issues regarding the Union's request for information since Respondent, by its letter of July 26, 1982, admitted that it refused to furnish the Union with such information.[6] We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent is, and has been at all times material herein, a Missouri corporation, with its principal office and place of

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[5] See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

[6] We have reviewed the requested information, as set forth in par. 8A of the complaint, and find that it pertains to bargaining unit employees and is presumptively relevant to the Union's performance of its function as the exclusive bargaining representative of the employees in the unit described herein.

business located at 3644 Scarlet Oak Boulevard, St. Louis County, Missouri, where it is engaged in the manufacture, nonretail sale, and distribution of metal parts, components, and related products. During the year ending July 31, 1982, which period is representative of its operations during all times material herein, Respondent, in the course and conduct of its business operations, manufactured, sold, and distributed from Respondent's facility products valued in excess of $50,000, of which products valued in excess of $50,000 were shipped from Respondent's facility directly to points located outside the State of Missouri.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

District 9, International Association of Machinists and Aerospace Workers, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees employed by Respondent at its 3644 Scarlet Oak Blvd., St. Louis County, Missouri, facility, EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act.

2. The certification

On May 15, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 14, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on July 13, 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about July 19, 1982, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about July 26, 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since July 26, 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit and that, by such refusal,

Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement, and to provide the Union, on request, information necessary for collective bargaining.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce

Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Davlan Engineering, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. District No. 9, International Association of Machinists and Aerospace Workers, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time production and maintenance employees employed by Respondent at its 3644 Scarlet Oak Blvd., St Louis County, Missouri, facility, excluding office clerical and professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since July 13, 1982, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about July 26, 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all

the employees of Respondent in the appropriate unit, and to furnish the Union with information that is relevant and necessary to its role as the exclusive bargaining representative, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Davlan Engineering, Inc., St. Louis County, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with District No. 9, International Association of Machinists and Aerospace Workers, AFL--CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed by Respondent at its 3644 Scarlet Oak Blvd., St. Louis County, Missouri, facility, EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement and provide the Union, upon request, information necessary for the purpose of collective bargaining.

(b) Post at its St. Louis County, Missouri, facility copies of the attached notice marked ''Appendix.''[7] Copies of said notice, on forms provided by the Regional Director for Region 14, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be

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[7] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. December 6, 1982

John H. Fanning, Member

Don A. Zimmerman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

CHAIRMAN VAN DE WATER, dissenting:

Inasmuch as I dissented in the Board's decision certifying the Union, I would not grant summary judgment in the instant proceeding.

Dated, Washington, D.C. December 6, 1982

John R. Van de Water, Chairman

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with District No. 9, International Association of Machinists and Aerospace Workers, AFL--CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to provide the Union, upon request, information necessary for the purpose of collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

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All full-time and regular part-time production and maintenance employees employed by us at our 3644 Scarlet Oak Blvd., St. Louis County, Missouri, facility, EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act.

DAVLAN ENGINEERING, INC.

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 210 Tucker Boulevard North, Room 448, St. Louis, Missouri 63101, Telephone 314--425--4361.